

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-424838 and all other
ISSUED TO: EMILE HENRIQUE JACKSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

APPEAL NO. 1239

EMILE HENRIQUE JACKSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 7 June 1960, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as an able seaman on board the United States SS MORMACWIND under authority of the document above described, on 2 February 1960, appellant stole \$117.00; on 19 April 1960, Appellant assaulted and battered a member of the crew.

At the hearing, Appellant was represented by nonprofessional counsel. Appellant entered a plea of not guilty to the charge and each specification.

Both parties introduced in evidence the testimony of several witnesses. Appellant testified that he did not commit either of the alleged offenses.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all documents to Appellant, for a period of three months outright plus three months on twelve months' probation.

FINDINGS OF FACT

On a voyage including the dates of 20 February and 19 April 1960, Appellant was serving as an able seaman on board the United States SS MORMACWIND and acting under authority of his document.

On 20 February, the ship was in the Port of New York. About 0445 on this date, the ship's Purser awoke in his bunk and saw Appellant at the foot of the bunk handling the Purser's wallet which had been in a coat in his locker. When the Purser asked Appellant what he was doing, Appellant dropped the wallet, quickly left the room, and hurriedly left the ship. (The security guard at the gangway recorded the departure of someone named Jackson at 0450 and his document number was the same as Appellant's.) Appellant took \$117.00 of the \$120.00 which had been in the Purser's wallet.

The ship was at Capetown, South Africa on 19 April when Appellant went ashore in the afternoon before realizing that he was supposed to have turned to with the deck force. Appellant felt that he had been tricked by the Boatswain into thinking that the deck force was not required to work on this afternoon. Consequently, Appellant returned to the ship and went to the Boatswain's room at 1700. After the Electrician left, Appellant grabbed the Boatswain by the neck and forced him back on a bunk. The Boatswain broke loose and ran to the Chief Mate's room followed by Appellant. The Chief Mate was not in his room. Appellant held the Boatswain against the bulkhead near the Chief Mate's room while the two seamen argued loudly. The Chief Mate came to the scene when he heard the commotion and separated the two men. The Boatswain was not injured.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the Order imposed by the Examiner. It is urged that the Examiner's decision is against the weight of the credible evidence. The testimony of Appellant and his witnesses should have been believed.

APPEARANCE ON APPEAL: Cooper, Ostrin and DeVarco of New York City by Thomas J. Doyle, Esquire, of Counsel.

OPINION

There is a considerable amount of conflicting testimony in the record. As a matter of credibility to be resolved by the trier of the facts, the Examiner accepted as true the testimony which was adverse to Appellant.

The Purser testified that he was certain that the person with his wallet at the foot of the bunk was Appellant. The Examiner stated that he accepted this testimony which was corroborated by the testimony of the gangway security guard that a seaman with Appellant's document left the ship at 0450. The Examiner specifically rejected the testimony of Appellant and his wife that he was home in Brooklyn all night.

With respect to the assault and battery specification, the Examiner believed the Boatswain as to what occurred in his room and rejected Appellant's testimony that he did not touch the Boatswain. The latter's testimony that he was held by Appellant near the Chief Mate's room is corroborated by the Chief Mate's testimony. This version was adopted by the Examiner.

Since there is no reason to reject the Examiner's evaluations as to credibility, the conclusions that the two offenses alleged were proved are upheld. It is my opinion that the Order imposed was moderate under the circumstances.

ORDER

The Order of the Examiner dated at New York, New York on 7 June 1960 is AFFIRMED.

J. A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C. this 24th day of May 1961.